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State of California by and through California
Highway Patrol and Officer Ramon Silva

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SANDRA KIRKMAN AND
CARLOS ALANIZ,
INDIVIDUALLY AND AS
SUCCESSORS-IN-INTEREST TO
JOHN ALANIZ, DECEASED,

Plaintiff,

v.

STATE OF CALIFORNIA;
RAMON SILVA; AND DOES 1-10,
INCLUSIVE,

Defendant.

Case No.: 2:23-cv-07532-DMG-SSC

**REPLY OF DEFENDANTS' TO
PLAINTIFFS' OPPOSITION TO
MOTION TO MODIFY
SCHEDULING ORDER;**

Date: February 7, 2025
Time: 9:30 a.m.
Dept: 8C
Judge: Hon. Dolly M. Gee

Complaint Filed: July 28, 2023
Trial Date: April 15, 2025

INTRODUCTION

Trying to refute defendants' good cause showing for a 90-day continuance of the March 18 and April 15, 2025 final pretrial conference and trial dates, plaintiffs offer two arguments. Neither is persuasive.

First, plaintiffs argue defendants' prior counsel (the Attorney General's Office (AGO)) was not diligent in declaring the conflict that necessitated new counsel, and defendants should be punished for their conflicted counsel's conduct.

Although in some circumstances holding a client responsible for its counsel's conduct is appropriate under the theory that the client should be bound by their *chosen counsel's* neglect, this is not one of those circumstances because

1 defendants did not choose prior counsel – they had to use prior counsel and had no
2 control of the timing of the AGO’ conflict declaration. Doc. 59-3, ¶¶ 4-5 (Llyod
3 Declaration).

4 Second, despite not disputing anything new counsel stated in his declaration
5 regarding the amount of material or complexity of the issues in the case or the time
6 it will take to become fully prepared for trial, *see* Doc. 59-2 (Roistacher
7 Declaration), plaintiffs argue counsel’s ability to prepare a summary judgment
8 motion means counsel needs no additional time to prepare for trial.

9 That counsel devoted significant time since appearing in this case on
10 December 18, 2024 to obtain and analyze the evidence needed to prepare a
11 summary judgment motion does not also mean additional time to prepare for trial
12 is not needed. Roistacher Declaration, ¶¶ 3, 6-7. To be sure, new counsel still
13 does not have access to the entire case file from the AGO. *Id.*, ¶ 3.

14 Though not a factor in the “good cause” analysis, plaintiffs argue lead
15 counsel Dale Galipo is not available for trial in July 2025 because he has trial
16 scheduled for July 14 and July 28, 2025, and a full trial calendar between April
17 and July 2025. Yet Mr. Galipo submits no declaration to support this assertion or
18 even identify the matters in which trials are purportedly set. Indeed, no declaration
19 of anyone was submitted. And certainly nothing establishes Mr. Galipo is
20 unavailable for some date after July 2025. If Mr. Galipo is truly unavailable for
21 trial in July 2025, then this Court can order the parties to confer on a trial date
22 sometime after July 2025 when all counsel are available.

23 Moreover, plaintiffs oppose defendants’ motion despite already accepting
24 this case is unlikely to go to trial on April 15, 2025 given defendants’ summary
25 judgment motion which will be filed no later than January 24 and heard on
26 February 28, 2025.¹ They state so in their opposition: “Furthermore, it is highly
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28 ¹ Defendants were prepared to file their summary judgment motion to meet the

1 likely that if this Court denies defendants’ summary judgment motion, defendants
2 will exercise their right to file an interlocutory appeal, staying this case in the
3 District Court and potentially delaying the trial indefinitely.” Doc. 62, p. 6:1-4.
4 Given this is their expectation, which is not an unreasonable one, it raises the
5 question of plaintiffs’ true motivation behind fighting so hard to keep a trial date
6 they do not expect will come to fruition. And if this is the case, why should the
7 parties and court engage in time-consuming pretrial preparation only to have to
8 (potentially) do it again sometime in the future depending on the outcome of an
9 appeal. At the very least, defendants’ summary judgment motion will alter the
10 nature and extent of the claims that may have to be tried.

11 **PLAINTIFFS DO NOT REFUTE DEFENDANTS’ SHOWING OF GOOD**
12 **CAUSE**

13 Plaintiffs argue the AGO should have declared a conflict earlier than it did,
14 and that the AGO’s dilatory conduct should be imputed to defendants to defeat a
15 showing of good cause. Defendants agree with the former, but not the latter.

16 It is true that “a client is ordinarily chargeable with his counsel’s negligent
17 acts.” *Cnty. Dental Servs. v. Tani*, 282 F.3d 1164, 1168 (9th Cir. 2002). This is
18 “[b]ecause the client is presumed to have *voluntarily chosen* the lawyer as his
19 representative and agent, he ordinarily cannot later avoid accountability for
20 negligent acts or omissions of his counsel.” *Id.* (emphasis added); *see also Link v.*
21 *Wabash R. Co.*, 370 U.S. 626, 633-34 (1962) (“Petitioner voluntarily chose this
22 attorney as his representative in the action, and he cannot now avoid the
23 consequences of the acts or omissions of this freely selected agent.”).

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26 original February 21, 2025 hearing deadline (with an additional week for
27 plaintiffs’ to file opposition), but cooperated and agreed to move the hearing date
28 to February 28, 2025 because of Mr. Galipo’s unavailability on February 21. *See*
Doc. 60; Roistacher Declaration, ¶ 4.

1 Defendants did not voluntarily choose the AGO as its counsel. To be sure,
2 defendants *must be* represented by the AGO until a conflict is declared. Doc. 59-
3 3, ¶¶ 3-4. And for whatever reason, the AGO did not declare a conflict until it did.
4 Defendants had no control over the timing of the AGO's conflict declaration. *Id.*

5 Defendants are, as plaintiffs observe, filing a summary judgment motion.
6 This was no secret. *See* Doc. 59-2, ¶ 19 (stating intention to prepare and file a
7 summary judgment motion). According to plaintiffs, the ability to file a summary
8 judgment motion means new counsel should be fully prepared for the creation and
9 submission of trial exhibits and the trial itself. No doubt preparing a summary
10 judgment motion required reviewing case materials, but the knowledge of case
11 materials required for a summary judgment focusing entirely *on liability* is
12 significantly more limited than what is required to be fully prepared for a trial on
13 liability and damages. Roistacher Declaration, ¶¶ 6-8. To prepare the summary
14 judgment motion, new counsel watched videos recordings of the incident, read
15 officer and witness depositions and statements, and some of the material produced
16 during discovery that new counsel knew from experience would be necessary for
17 a summary judgment motion. *Id.*, ¶ 7. There still exists significant material new
18 counsel cannot currently access. *Id.*, ¶ 3.

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CONCLUSION

Defendants respectfully contend that “good cause” exists in this unique set of circumstances warranting this Court’s exercise of discretion to modify the scheduling order as requested.

Dated: January 23, 2025

Dean Gazzo Roistacher LLP

By: /s/ Lee H. Roistacher

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State of California by and through
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